IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

Crl.Rev.Pet.No. 3764 of 2007()

CRA.260/2006 of ADDL. SESSIONS COURT (ADHOC), THODUPUZHA
CC.633/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, ADIMALI

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED:

VARGHESE MATHEW @ ITTY BABY,
ITTIYIL HOUSE, PROPRIETOR NIRAYATHU INDUSTRIES,
NARIYAMPARA P.O., KATTAPPANA.

BY ADV. SRI.JOSEPH SEBASTIAN PURAYIDAM

RESPONDENTS: RESPONDENTS/COMPLAINANT AND STATE:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. P.N. SALIM, S/O. NEELAKANDAN,
PARAYIL HOUSE, VELLATHOOVAL.

BY ADV. SRI.S.SUBHASH CHAND
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3764 OF 2007

Dated this the 19th day of October, 2007

O R D E R

In this revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.633/2003 on the file of the J.F.C.M., Adimaly challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions before me:-

The specific case of the revision petitioner was that the transaction set up by the complainant was false and that Ext.P1 was a signed blank cheque which he had entrusted with one George while an employee of the revision petitioner availed a loan from the said George. The cheque was offered as a security for the loan availed by the employee and the same was misutilised by the said George by handing it over to the complainant's brother who in turn was passing it on to the complainant.

5. This version of the revision petitioner was not believed by the courts below. If the cheque was entrusted with one George as alleged, George would have been the best person to be cited as a witness. At least the petitioner could have cited the employee for whom he claims to have stood as a surety. That was also not done. Instead, the person who was examined as DW1 is one who claims to have witnessed the aforesaid transaction. If such a transaction as alleged by the accused had taken place, then as a reasonable and prudent man, the revision petitioner would have proceeded against the said George for betraying the confidence reposed in him. But, for reasons best known to the revision petitioner, no steps appear to have been taken against the said George. Equally misconceived is the request of the

revision petitioner to send the cheque to the handwriting expert for ascertaining the age of the writings on the cheque. When the transaction set up by the revision petitioner itself was not proved, there was no need for sending the cheque to the handwriting expert. It is pertinent to note that the revision petitioner did not send any reply also to the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 2nd respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.60,000/- (Rupees sixty thousand only) within five months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence.

Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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